

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FRANK S. WALKER,
Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

Case No. [13-cv-05037-BLF](#)

**ORDER DENYING MOTION TO
COMPEL SERVICE BY MAIL;
ORDER EXTENDING DEADLINE FOR
PLAINTIFF TO FILE MOTION FOR
SUMMARY JUDGMENT AND
REFERRING PLAINTIFF TO FLASH**

Re: Dkt. No. 29

I. PLAINTIFF'S "MOTION TO COMPEL SERVICE BY MAIL" (DKT. NO. 29)

Before the Court is Plaintiff Frank S. Walker's "Affidavit in Support of Motion and Request Supplemental for Oral Argument on Motion for Compel Defendant Group SSA Service by Mail," filed April 21, 2014. Dkt. No. 29. Defendant filed a response on April 22, 2014, and Plaintiff replied on April 28, 2014. Dkt. Nos. 30, 32. Having read and considered the parties' papers, the Court deems the matter suitable for determination on the parties' respective written submissions and DENIES Plaintiff's request for an oral argument on the matter. For the reasons stated below, this motion is DENIED as moot.

Plaintiff is proceeding *pro se* and appears to be seeking a Court order that all papers filed in this action should be served on Plaintiff by U.S. mail, in compliance with the Court's requirement for serving *pro se* parties. Defendant's April 22, 2014 response avers that it has served on Plaintiff by U.S. mail all papers that Defendant filed in this action, and that Defendant has not filed any papers in this matter since March 11, 2014. *See* Dkt. No. 30, at 3:2-10. Defendant's response included a Proof of Service indicating that a copy of the filing had been sent to Plaintiff by U.S. mail at his address of record. *See* Dkt. No. 30. In his reply brief, Plaintiff did

1 not challenge Defendant's assertions regarding service, and in fact Plaintiff appears to have
2 received service of Defendant's opposition brief filed on April 22, 2014.

3 There being no evidence to support Plaintiff's contention that Defendant is not complying
4 with its obligation to serve Plaintiff by mail, and ample evidence to the contrary having been
5 submitted by Defendant, the Court DENIES Plaintiff's motion as moot.

6 Additionally, Plaintiff's April 28, 2014 filing, which was styled as a "Reply" to
7 Defendant's April 22, 2014 response, raised for the first time new requests for relief to which
8 Defendant did not have an opportunity to respond. Because the Court "need not consider
9 arguments raised for the first time in a reply brief," Plaintiff's new requests are stricken without
10 prejudice. *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007).

11 **II. EXTENSION OF DEADLINE FOR PLAINTIFF TO FILE MOTION FOR** 12 **SUMMARY JUDGMENT**

13 The deadline for Plaintiff to file his motion for summary judgment, ordered by the Court
14 on April 8 and 15, has passed. *See* Dkt. Nos. 26, 28. However, in light of the potential confusion
15 caused by the reassignment of this matter to the undersigned, the Court will give Plaintiff a short
16 extension of the deadline for filing his motion for summary judgment. Plaintiff is ordered to file
17 his motion for summary judgment by **May 12, 2014**.

18 Plaintiff's motion for summary judgment should address, in one filing, *all bases* on which
19 the decision of the Commissioner of Social Security should be modified or reversed. The Court
20 will determine whether oral hearing is needed following completion of briefing.

21 No additional extensions of time will be granted. If Plaintiff does not file his motion for
22 summary judgment by May 9, 2014, Defendant shall file its motion for summary judgment by
23 June 9, 2014.


24 **III. REFERRAL TO FLASH**

25 The Court further affirms its orders of March 20, 2014 and April 8, 2014 that Plaintiff
26 contact a Federal Legal Assistance Help ("FLASH") Center. Dkt. Nos. 22, 26. The information
27 for the San Jose FLASH Center is:
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1 United States Courthouse
2 280 South 1st Street
3 2nd Floor, Room 2070
4 San Jose, CA 95113
5 Phone: 408-297-1480

6 **IT IS SO ORDERED.**

7 Dated: April 30, 2014

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9 BETH LABSON FREEMAN
10 United States District Judge
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United States District Court
Northern District of California